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ATTORNEYS FOR APPELLEE:

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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 48A05-0803-CR-128

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0208-FB-400

MEMORANDUM DECISION - NOT FOR PUBLICATION
BAKER, Chief Judge

Appellant-defendant Kevin Lebar Stone appeals the revocation of his probation, challenging the sufficiency of the evidence. Specifically, Stone argues that the revocation must be set aside because the State failed to demonstrate that he received a written statement of the conditions of his probation. Finding no error, we affirm the judgment of the trial court.

FACTS

On August 22, 2002, Stone was charged with resisting law enforcement, battery, and armed robbery. Thereafter, on February 24, 2003, the State and Stone entered into a plea agreement, which provided that Stone would plead guilty to armed robbery in exchange for the State's agreement to dismiss the remaining charges, as well as subsequent offenses set forth under a separate cause number. The trial court accepted the plea agreement and Stone was sentenced to twelve years of incarceration at the Indiana Department of Correction (DOC) for armed robbery with seven years executed and the balance suspended to probation. Stone also received and signed a copy of the probation order that set forth the terms and conditions of his probation.

Thereafter, Stone filed a motion to correct error, which the trial court granted on March 3, 2003. As a result, the trial court reduced Stone's sentence from twelve years to ten years with seven years executed and three years suspended to probation.

On September 21, 2007, the State filed a Notice of Probation Violation (Notice) against Stone, alleging that he had failed to make restitution payments and failed to pay probation fees in accordance with the conditions of probation. Stone admitted to the violations on October 16, 2007, but the trial court decided not to impose any additional

sanctions. The trial court also found that the original terms of probation should remain in effect and that Stone should submit to a new substance abuse evaluation within thirty days. A subsequent probation order was issued, which Stone signed.

On January 16, 2008, the State filed a second Notice against Stone, alleging that he had committed the offenses of burglary, armed robbery, pointing a firearm, and carrying a handgun without a license on January 10, 2008. The State also alleged that Stone had failed to obtain a court-ordered substance abuse evaluation and that he had submitted a urine specimen that tested positive for the presence of marijuana on January 10.

At a revocation hearing that was conducted on February 19, 2008, the victim of the most recent offenses testified that Stone broke into his residence and stole his money and property. At some point during the hearing, the trial court commented as follows:

The evidence is unrefuted with respect to the technical violations. This is in open Court, Mr. Stone, in response to a probation violation and a resolution in open Court he was instructed to get a substance abuse evaluation. Mr. Considine referred to the October 16 in Court Order that was not complied with, that was a clear violation. There is also a violation found with respect to the January 10th, s [sic] '08 urine screen. Mr. Stone violated his probation by using marijuana on or about January 10th or some date just prior to that while he was on probation. The Court also finds, and I short circuit this a little bit, I know Gentlemen, but this is a probation proceeding and not a full-blown trial. It's certainly more likely than not based on the evidence we have in front of us that Mr. Stone was involved in criminal activity on or about January 10th of '08, specifically involved and participated in a Burglary consistent with the evidence we have heard, Pointing a Firearm and Carrying a Handgun without a License, all in violation of Indiana, Indiana criminal code. Those are the violations found today, the Burglary, the Pointing a Firearm, the Carrying a Handgun.

Tr. p. 42-43. Following the hearing, the trial court revoked Stone's probation and ordered him to serve three years in the DOC. Stone now appeals.

DISCUSSION AND DECISION

In addressing Stone's contention that the probation revocation must be set aside because he purportedly did not receive notice of the conditions and the terms of his probation, we initially observe that probation revocation proceedings are civil in nature, and the State must prove the allegations by a preponderance of the evidence. Ind. Code § 35-38-2-3. Because probation revocation does not deprive a defendant of absolute liberty, but only a conditional liberty, defendants are not afforded the full due process rights that are afforded the defendant in a criminal proceeding. Terrell v. State, 886 N.E.2d 98, 100 (Ind. Ct. App. 2008). The minimum requirements for due process are:

(a) written notice of claimed violations of probation; (b) disclosure to the probationer of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer finds good cause for not allowing confrontation); (e) a neutral and detached hearing body; and (f) a written statement for reasons revoking probation.

Id. (citing Morrissey v. Brewer, 408 U.S. 471, 482 (1972)).

Although Stone does not claim a violation of his due process rights as set forth above, he directs us to this court's opinion in State v. Allen, 809 N.E.2d 845 (Ind. Ct. App. 2004), in support of his contention that the revocation order was improper. In Allen, the State appealed the trial court's dismissal of the defendant's notice of probation violation. In affirming the dismissal, we observed that the record established that the defendant never received a written copy of the conditions of his probation, and there was

no evidence showing the defendant's acknowledgement and understanding of the conditions of probation. Id. at 848. Thus, we determined that the trial court's dismissal of the notice of probation violation was proper. Id.

Unlike the circumstances in Allen, the record in this case shows that Stone received notice of the probationary terms and conditions on February 24, 2003, which was the date of the original sentencing. Appellee's App. p. 1-2, 6. When the trial court subsequently reduced Stone's sentence, the original conditions of probation remained in effect. Appellant's App. p. 6-7. Moreover, Stone was provided with notice on October 16, 2007, that the length of his probation had changed. Id. at 8. Stone also signed a modified copy of the probation order that required him to submit to a new substance abuse evaluation. Appellee's App. p. 3-4. Stone acknowledged in the document that he understood the conditions of his probation. Id. at 3. Thus, contrary to Stone's contention, the record demonstrates that he received notice of his probationary terms and conditions.

We further note that the trial court also revoked Stone's probation because the evidence established that he committed additional criminal offenses. The requirement to refrain from committing additional crimes is an automatic term of probation, and a trial court need not advise a defendant that he may not commit criminal offenses while on probation. Atkins v. State, 546 N.E.2d 863, 865 (Ind. Ct. App. 1989). However, the record nonetheless demonstrates that Stone received written notice that he was not to commit any criminal offenses while on probation. Appellee's App. p. 1-4.

In light of this evidence, the record reflects that Stone was provided with the terms and conditions of probation. Therefore, we conclude that the trial court properly revoked Stone's probation.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.